

ASSOCIATION OF LEGAL PROFESSIONALS (ALP)

SECOND PROPOSAL

May 13, 2010

On April 20, 2010, ALP made its initial proposal, which was that the City accept compensation reductions by freezing 5 vacant positions in the City Attorney's Office. Since that time, the following two significant events occurred:

- In a letter dated April 26, 2010, the City rejected our proposal, asserting that it did not achieve the required 10 percent reduction in personnel costs. Beyond repeating that 5 percent of the reduction must be ongoing and 5 percent may be one-time, the letter does not include a counter proposal.
- On Monday, May 2, 2010, the City Manager released the Proposed Operating Budget. The Proposed Operating Budget **permanently** eliminates 8 **vacant** positions in our Office, including the 5 positions that ALP asked to be frozen. In addition, it would eliminate 3 **filled** attorney positions.

ALP started the negotiations with a strong desire to reach an agreement that both helped the City during these difficult economic times, and was fair and equitable to ALP. Although the City's letter concludes that the "City is interested in reaching a voluntary settlement agreement with ALP for Fiscal Year 2010-2011," ALP has become increasingly skeptical about whether this is really the case as the "negotiations" have progressed. Nevertheless, in a continuing spirit of cooperation, ALP makes the following second proposal.

First, however, ALP wishes to clarify several points that form the general underpinnings of its new proposal.

- Our negotiations have proceeded on the fundamental principle that ALP's **first** 5 percent reduction in compensation would "buy back" the proposed layoff of 3 filled attorney positions. Nevertheless, the Recommended General Fund Service Restoration Summary contained in the Proposed Operating Budget declares – for the first time - that ALP can only "buy back" 2 of the 3 positions. Moreover, it states that this "buy back" must come from the **second** 5 percent reduction in compensation. These statements in the Proposed Operating Budget raise serious questions about the manner in which the City is "negotiating."
- The Proposed Operating Budget for our Office eliminates 11 positions from an office that is already one of the leanest city attorney offices in California. Yet, it contains no discussion of the services that will need to be eliminated. Instead, it repeatedly refers to shifting the workload to other persons in the Office. We agree with the City negotiator's statement **in our last negotiating session that the shifting of workloads is a change in working conditions and is subject to bargaining.**

- The City does not appear to be seeking a 10 percent compensation reduction from all employee groups. The City Council recently unilaterally imposed a 5 percent reduction for ABMEI, and our Office's Proposed Operating Budget states that the Executive Management and Professional Employees are taking a 5 percent reduction. This Office's Proposed Operating Budget does not say anything about an additional 5 percent reduction.
- The proposed compensation reductions to the Executive Management and Professional Employees in our Office are not being used to "buy back" any positions in our Office. Thus, the City's position apparently is that the burden of "buying back" positions falls ONLY on ALP members.
- The City's letter alleges that the budget deficit is currently \$116.2 million. These are extraordinary economic times and the City is facing a very real budget deficit this year. However, our new proposal should not be read as "buying into" the alleged \$116.2 million deficit that the City is using publicly and in negotiations with labor groups. To the contrary, ALP has serious concerns as to the accuracy and possible over inflation of the deficit.
- The City's letter also repeatedly refers to the full \$116.2 million as a "structural budget deficit." Whatever the term "structural budget deficit" may mean, referring to the entire deficit as being "structural" is inaccurate. Doing so ignores the fact that we are in the midst of – and by many accounts, the end of – an extraordinary economic downturn. Moreover, this characterization unfairly and incorrectly blames the City's budget problems on its employees. ALP does not believe that this "blame game" serves the City well in the long run.
- The City's letter refers to ALP's "equitable share of the compensation reductions" as being \$911.5 thousand. The City arrived at \$911.5 thousand by simply multiplying the wages and benefits of ALP members by 10 percent. ALP believes that most of the "structural" budget deficit is due more to the City's compensation packages with other employee groups and various discretionary spending decisions. Indeed, as discussed in ALP's initial proposal, ALP members do not receive automatic step increases like the majority of other City employee groups. Nor, has the Office's budget included funds for merit increases for several years. In short, ALP believes that the arbitrarily chosen 10 percent derived \$911,500 target represents an unfair representation of any burden that our members have placed on the City's current budget deficit.
- The City's letter asserts that the City is "confident that sick leave pay is not a vested benefit and is a mandatory subject of bargaining." It is our understanding that the City has a confidential legal opinion supporting this position. Despite the alleged new era of sunshine, the City has – to this point – been unwilling to share the opinion. ALP respectfully disagrees with the City's position and believes that

sick leave pay is a vested benefit. ALP has requested that the opinion be made public

- The City's letter urges ALP to exchange proposals and counter proposals about sick leave payout. Even aside from the "vested" issue, the City's bargaining position is unreasonable. To date, the City is unwilling and/or unable to demonstrate what percentage of a reduction in personnel costs in FY 2010-2011 – or in any future fiscal year - would be achieved by limiting sick leave payout. Without providing such information, the City cannot reasonably expect ALP to be able to intelligently and reasonably negotiate this issue. We therefore reject this proposal to agree to any cut to the sick leave payout.¹
- The City's letter states that ALP's assertion about the City refusing to negotiate furloughs, shorter work weeks or alternative hours at City Hall is incorrect. Although ALP finds it odd that the City is negotiating these alternatives with each bargaining group without proposing some kind of City-wide program, ALP is happy to hear that the City is open to discussing these alternatives at future negotiating sessions.
- The City has also come up with an arbitrary and unreasonable definition of what it will accept as "ongoing savings" in employee costs. True ongoing savings can come in many forms – and freezing or eliminating vacant positions is an ongoing savings that will be retained and only would change if the City agreed to change it. Counting the savings realized through not filling vacant positions should not only be considered by the City, but it should be at the top of the list before threatening to lay off employees or to arbitrarily slash compensation.
- The City has emphasized retiree healthcare as a significant source of the "structural budget deficit." By the City's own admission, the level of the City's contribution toward that amount is discretionary. There is no requirement that the City allocate any particular amount toward retiree healthcare this year, much less the large number the City administration is recommending this year. In fact different public agencies have developed a variety of funding plans to gradually reach full funding of their employee benefit obligations. The City's financial planning should be made in a prudent, reasonable and fair manner that will cover foreseeable future expenditures.
- ALP understands the time issues involved and does not appreciate the threats of layoffs, particularly when the manner in which a reduction in force will be affected and the resulting impact on workload are both subject to bargaining.

¹ The provision in the City's proposal to allow the City to require employee's out sick from more than 1 day to provide a doctor's note justifying the absence is just insulting. It reflects an utter lack of trust in the workforce.

Despite having many reservations, ALP believes it is ultimately in the best interests of the City Attorney's Office – and thus the City – to reach an agreement. Accordingly, ALP makes the attached proposal with a term of one year. The attached proposal also includes each of the following terms:

- **“Buy Back” of the three positions:** Consistent with the representations of the City negotiating team, the first 5 percent reduction from ALP will be used to “buy back” the three filled attorney positions identified in the Proposed Operating Budget.
- **No other compensation reductions:** ALP is acting in good faith with regard to proposing the concessions in compensation. It is acting with the understanding that the City is not now planning or discussing further reductions in compensation during FY 2010-2011, and that the City will not take any action during FY 2010-2011 resulting in further reductions in compensation. ALP's agreement with the City shall include assurances that this is the case.
- **No new hires during agreement term:** The whole point of ALP's concession is to help the City reduce its budget deficit. ALP does not believe it would be fair or reasonable to agree to a reduction in compensation/benefits only to have the City turn around and start hiring new employees in the City Attorney's Office. Accordingly, the agreement shall include a provision that there will be no new hires in the City Attorney's Office during FY 2010-2011 unless the compensation/benefit reductions are first restored.
- **Any layoffs in accordance with civil service rules:** The agreement shall reflect that if there are layoffs of any ALP members, those layoffs will occur in accordance with San Jose Municipal Code Sections 3.04.1160 and 3.04.1170 including members of ALP who are not civil service employees. These provisions govern layoffs and layoff notices for civil service employees. ALP believes they provide a fair and reasonable way to proceed with any layoffs.
- **Reinstatement:** For the term of our Agreement, any person laid off must be offered a position at his/her former rate of compensation before a new hire can occur. Again, this is consistent with the way layoffs are addressed under the civil service rules. ALP believes this provides a fair and reasonable way to handle layoffs.



William Clark
ALP President

Attachment

EXHIBIT A

DOLLAR VALUE % COST PER EMPLOYEE

#	ALP PROPOSAL	DOLLAR VALUE	%	COST PER EMPLOYEE
1	TERM - July 1, 2010 - June 30, 2011			
2	PAY—5% reduction	\$24,000.00	0.3%	
3	HEALTH INS. COST SHARE 85/15 SPLIT			
4	HMO-CO-PAY CHANGES			
5	ELIMINATION OF DUAL COVERAGE			
6	HEALTH AND/OR DENTAL IN LIEU			
7	SICK LEAVE PAYOUT			
8	MEDICAL VERIFICATION			
9	RETIREMENT COST MITIGATION			
10	see above			
11	DISABILITY LEAVE SUPPLEMENT			
12	INELIGIBILITY IF OFFER AND DECLINE MOD. DUTY			
13	[No #13 in City proposal]			
14	VACATION			
15	HOUSEKEEPING???			
16	Retirement Stability Proposal = 2.04% of \$9.3 Million	\$189,720.00	2.1%	
17	Credit for FY 09/10 Concessions (Furlough + PDP)	\$245,165.00	2.7%	
18	Credit for Historic Loss of Merit/Step increases	\$91,100.00	1.0%	
	Subtotal	\$549,985.00	6.0%	
	TOTAL TARGET	\$911,000.00	10.0%	
WORKLOAD INCREASE SUBJECT TO BARGAINING				
254	Deputy City Attorney (vacant 3/6/10)	\$122,017.00		
6017	Legal Services Manager (vacant 6/12/10)	\$156,349.00		
265	Senior Legal Analyst (vacant 1/9/10)	\$115,265.00		
6415	Chief Deputy City Attorney (vacant 6/26/10)	\$258,890.00		
	Senior Deputy City Attorney est. (to be announced -vacant 6/12/10)	\$250,000.00		
		\$902,521.00	9.91%	

TOTAL ECONOMIC EFFECT OF PROPOSAL

15.94% *

*This total is subject to discussion to bring to the requested 10%.